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March 14, 2000

VIA HAND DELIVERY

Mr. Roy J. Stewart
Chief, Mass Media Bureau
Federal Communications Commission
The Portals II
445 – 12th Street, S.W.
Room 2-C347
Washington, D.C. 20554

In re: Petition of Louisiana Television, L.L.C. for Amendment of Section 73.622(b), Table of Allotments (MM Docket No. 99-317/RM-9743)[1/]

Dear Mr. Stewart

Louisiana Television, L.L.C., licensee of television station WBRZ, Baton Rouge, Louisiana filed a Petition for Rulemaking on August 13, 1999 proposing to substitute DTV Channel 13 for the allotted DTV Channel 42. The Notice of Proposed Rulemaking ("NPRM") was released on October 28, 1999; the NPRM specified December 20, 1999 as the Comment date and January 4, 2000 as the Reply Comment date. Comments in support of the NPRM were filed by Louisiana Television. No other Comments were filed.

Subsequent to the issuance of the NPRM, the Community Broadcasters Protection Act of 1999 was enacted as of November 29, 1999. A Notice of Proposed Rulemaking pertaining to the establishment of a Class A television service (RM-9260) was released on January 13, 2000. Louisiana Television participated in the aforesaid rulemaking proceeding by the filing of both Comments and Reply Comments. Appended hereto are

1/ An assignment of license (FCC Form 316) was granted by the Commission on December 29, 1999 which assigned the license of station WBRZ from Louisiana Television Corp. to Louisiana Television, L.L.C. The Assignment of License Application was consummated as of January 1, 2000.

copies of the pleadings filed on behalf of Louisiana Television in the LPTV rulemaking proceeding.

Louisiana Television submits that in the event of an engineering conflict between a Class A LPTV licensee and a full-power television licensee seeking to improve its prospective DTV operation and consistent with Congressional intent to encourage maximization of DTV facilities, the full-power television facility should prevail. Nevertheless, Louisiana Television authorized its consulting engineer (du Treil, Lundin & Rackley, Inc.) to undertake a study to determine the impact of its proposed DTV Channel 13 operation on relevant LPTV facilities, which have filed Certificates of Eligibility. With respect to such study, the following information is herewith submitted:

1. LPTV Station K13VE, Baton Rouge, Louisiana: The FCC database indicates that station K13VE is proposing to change to Channel 50 and has an application pending (file number BPTTL-960517PL). Irrespective of the aforesaid channel change application, David M. Loflin, licensee of station K13VE, has advised that he misunderstood the eligibility requirements for filing a Certificate of Eligibility, that he intends to file a letter requesting the withdrawal of the Certificate of Eligibility and that he will not file an application for a Class A license;

2. Station K13CG, Gonzales, Louisiana: The station is not listed on the revised Commission Public Notice (comprising a complete list of Certificates of Eligibility) identifying those LPTV facilities which have filed Certificates of Eligibility;

3. Station K13VG, Jennings, Louisiana: The proposed Channel 13 operation of station WBRZ-TV will neither create interference to K13VG nor receive interference from K13VG.[2/]

Louisiana Television was granted an extension of time to file its DTV application from November 1, 1999 to May 1, 2000. Moreover, Louisiana Television filed a Letter of Intent on December 30, 1999 to maximize Channel 2 for DTV purposes (its existing analog channel) and the allotted DTV Channel 42. In light of the information submitted herein and in order to comply with the maximization May 1, 2000 filing date (including the matter of multiple DTV channel filings), it is respectfully requested that the

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2/ In any event, Louisiana Television would agree to accept any interference from station K13VG to its proposed DTV Channel 13 operation.

Commission expeditiously resume the processing of and grant the Louisiana Television DTV Channel 13 rulemaking proposal.

Yours very truly

Robert B. Jacobi

RBJ:btc

Enclosures

cc: Mr. Clay Pendarvis
Ms. Pamela Blumenthal
Mr. David Loflin

PLEADINGS FILED ON BEHALF OF LOUISIANA TELEVISION IN LPTV RULEMAKING PROCEEDING

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	MM Docket No. 00-10
Establishment of a Class A	)	MM Docket No. 99-292
Television Service	)	RM-9260

TO: The Commission

REPLY COMMENTS OF THREE TV LICENSEES ENTITLED TO DTV MAXIMIZATION

NOE CORP. L.L.C., LOUISIANA TELEVISION BROADCASTING CORPORATION, and CHANNEL 3 OF CORPUS CHRISTI, INC. (together, the "Maximizers"), licensees of three full-power television stations in Monroe, Louisiana (Station KNOE-TV), Baton Rouge, Louisiana (Station WBRZ(TV)), and Corpus Christi, Texas (Station KIII(TV)), respectively, by their attorneys, pursuant to §1.415 of the Commission's Rules, hereby submit their Reply Comments concerning Paragraph 31 ("New DTV Service") of the Order and Notice of Proposed Rule Making ("NPRM"), FCC 00-16, released January 13, 2000, and the Comments filed in this proceeding pertaining thereto.

I. Introduction

1. In their February 10, 2000 Comments, the Maximizers maintain (¶¶'s 3-5) that under the Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified at* 47 U.S.C. §336(f), replication and maximization are cumulative interference-protection devices for full-power TV stations. Hence, the Maximizers fully support the Commission's proposed statutory interpretation in Paragraph 32 of the NPRM that Class A applicants must protect all stations seeking to replicate or

maximize their DTV operations, regardless of whether the DTV station's proposal involves "technical problems" within the meaning of Section (f)(1)(D) of the CBPA. In other words, the replication and maximization interference-protection provisions in Sections (f)(1)(D) and (f)(7)(A) for full-power DTV stations should be treated as cumulative interference protection devices that are not dependent upon each other. This is the only interpretation that is congruent with the intent of Congress to protect the ability of DTV stations to replicate and maximize their service areas.

2. Similarly, in Paragraphs 6-10 of their Comments, the Maximizers urge that the replication and maximization rights of full-power DTV stations should be protected under Paragraph 34 of the NPRM, even where full-power licensees are uncertain about their eventual DTV channel. This matter is of special concern to the Maximizers because each of them has a DTV allotment rulemaking proceeding pending in which it is proposing to substitute a different DTV channel for the frequency specified in the DTV Table of Allotments. The three proposals are summarized as follows:

Call Sign	**Docket No.**	**NTSC Chan.**	**Current DTV Allot.**	**Proposed DTV Allot.**
KNOE-TV	MM Doc. 99-265 (14 FCC Rcd 12384)	8	55	7
KIII(TV)	MM Doc. 99-277 (14 FCC Rcd 15242)	3	47	8
WBRZ(TV)	MM Doc. 99-317 (14 FCC Rcd 17816)	2	42	13

3. All three Petitions for Rulemaking were filed in 1999, the time has passed for comments and reply comments to be filed thereon, and no adverse comments or reply comments

were filed by LPTV licensees.[1] Nevertheless, the Maximizers believe that none of the proceedings will be concluded before the forthcoming deadline for filing Class A applications.

4. Thus, the Maximizers anticipate that they will not be in a position to file final maximalization applications by the May 1, 2000 deadline, because their pending DTV rulemaking proceedings will still be unresolved. Hence, the Maximizers urge in their Comments (¶¶'s 8 and 9) that the Report and Order in this proceeding should require the Commission's analog and DTV engineering data bases to be annotated to provide DTV interference protection for all of the identified channels in their December 30, 1999 maximization letters of intent for six (6) months after the DTV transition has occurred, so that licensees in the Maximizers' dilemma will have ample time to amend their DTV maximization applications to finalize their post-transition DTV maximization and replication proposals.

II. Pending Petitions for Rulemaking Deserve Interference Protection

5. Upon further examination of the NPRM and the recently filed Comments of other parties, the Maximizers now focus upon a second threat to their ability to maximize their DTV service areas, namely the possibility that under Paragraph 31 of the NPRM, no protection will be given by the Commission to the DTV frequencies identified in the Maximizers' above-referenced rulemaking proposals, even though the relevant Petitions for Rulemaking were filed in 1999, were entered into the TV engineering data base in 1999, and were put out for comment by the Commission in 1999.

6. Paragraph 31 of the NPRM states that the CBPA requires Class A applicants to protect the DTV service areas of "stations subsequently granted by the Commission prior to the

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[1] Comments opposing the allotment of DTV Channel 8, Corpus Christi, Texas, were filed by LPTV Channel 7, Corpus Christi -- and, shortly thereafter, withdrawn.

filing of a Class A application," citing Section (f)(7)(A)(ii)(III). The rest of Paragraph 31 intimates that existing NTSC licensees, like the Maximizers, who have current DTV allotments but are proposing to change their DTV allotments, will therefore be treated as "New DTV Service" and will be accorded no interference protection against Class A applications that are merely filed before affected DTV allotment rulemaking proposals (and their implementing FCC Form 301–DTV applications) are granted. ***The Maximizers respectfully maintain that the CBPA did not intend, and should not be interpreted, to accord such harmful treatment to full-power TV licensees.***

7. Historically, it is well established that Petitions for Rulemaking are normally accorded interference protection in the TV data base against subsequently filed new-station or station-modification applications from the date that such Petitions are filed. Indeed, in the FM service, prior to the Report and Order in MM Docket No. 91-348 ("Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments), 7 FCC Rcd 4917 (1992), the Commission gave priority to Petitions for Rulemaking that were filed after FM station applications on the theory that granting a new FM allotment or upgrading the class of an existing allotment served the public interest better than preferring a transmitter site specified in an application. In MM Docket No. 91-348, the Commission merely amended Section 73.208 of the Rules to prevent the acceptance of FM Petitions for Rulemaking filed after pending applications with which they interfered. Most importantly, unlike the implications of Paragraph 31 of the NPRM in this proceeding, the Commission did not accord preference to FM applications filed after FM Petitions for Rulemaking were filed.

8. Thus, given the Commission's long history of protecting TV Petitions for Rulemaking from their filing date, and the fact that *the CBPA is as concerned with allowing full-power TV stations to maximize their DTV service areas as it is in allowing LPTV stations to*

attain Class A status, the Maximizers maintain the Paragraph 31 of the NPRM needlessly and erroneously interprets Section (f)(7)(A)(ii)(III) of the CBPA in a way which undermines the interference protection rights of NTSC full-power licensees like the Maximizers, who are involved in pending DTV allotment rulemaking proceedings.

9. Importantly, there is no specific language in the legislative history of the CBPA or in Section (f)(7)(A)(ii)(III) which requires the Commission to interpret the CBPA to strip pending Petitions for Rulemaking of their historical interference protection. Moreover, even if Section (f)(7)(A)(ii)(III) were to be interpreted by the Commission as applying to pending Petitions for Rulemaking, the language of that Section does not prevent the Commission from being tougher in its interference-protection requirements than the statute itself. In other words, while Section (f)(7)(A)(ii)(III) **prohibits** the Commission **from granting** a Class A license where interference would be caused to DTV service areas "of stations subsequently granted by the Commission prior to the filing of a Class A application," the Section does not **require** the Commission **to grant** Class A applications which interfere with Petitions for Rulemaking or DTV applications that are outside of the time frame specified in the quoted language.

10. Thus, since the Commission has overall authority over interference protection matters and has discretional leeway under the wording of Section (f)(7)(A) of the CBPA, the Maximizers urge that, consistent with the Commission's historical treatment of TV Petitions for Rulemaking, the Commission should not treat pending Petitions for Rulemaking to change allotments as proposing "new" DTV service and should accord them interference protection against Class A applications from the date that the Petitions for Rulemaking were filed. In the event that such Petitions for Rulemaking are eventually denied, the Class A applicants or licensees can amend their pending Class A applications or file new applications to increase their service areas based on the elimination of the previous Petition for Rulemaking from the DTV

engineering data base. The Maximizers urge that this approach better balances the respective rights of existing full-power licensees and Class A applicants than what Paragraph 31 proposes (by implication) and better comports with the spirit of the CBPA and the paramount public interest.

WHEREFORE, in light of the foregoing, the Three DTV Maximizers respectfully request that the Commission should adopt a Report and Order in this proceeding consistent with these Reply Comments.

Respectfully submitted,

NOE CORP. L.L.C.
LOUISIANA TELEVISION BROADCASTING CORPORATION
CHANNEL 3 OF CORPUS CHRISTI, INC.

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Their Attorneys

Dated: February 22, 2000

BEFORE THE

Federal Communications Commission

In the Matter of	)	
	)	MM Docket No. 00-10
Establishment of a Class A	)	MM Docket No. 99-292
Television Service	)	RM-9260

TO: The Commission

COMMENTS OF THREE TV LICENSEES ENTITLED TO DTV MAXIMIZATION

NOE CORP. L.L.C., LOUISIANA TELEVISION BROADCASTING CORPORATION, and CHANNEL 3 OF CORPUS CHRISTI, INC. (together, the "Three DTV Maximizers" or the "Maximizers"), licensees of three full-power television stations in Monroe, Louisiana (Station KNOE-TV), Baton Rouge, Louisiana (Station WBRZ(TV)), and Corpus Christi, Texas (Station KIII(TV)), respectively, by their attorneys, pursuant to §1.415 of the Commission's Rules, hereby submit their Comments on Paragraphs 30-34 of the Order and Notice of Proposed Rule Making ("NPRM"), FCC 00-16, released January 13, 2000, in the above-captioned matter.

I. Introduction

1. The Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified at* 47 U.S.C. §336(f), primarily focuses on establishing a Class A television license available to licensees of qualifying low-power television ("LPTV") stations. However, a key reciprocal consideration in the CBPA is interference protection for licensed and to-be-licensed full-power analog and digital ("DTV")

television stations. This interference regulatory concern is actually expressed in two separate sections of CBPA:

- Section f(1)(D) – "Resolution of Technical Problems" – which specifies that the Commission must take steps to ensure replication of a full-power DTV applicant's service area under Sections 73.622 and 73.623 of the Rules, and to permit maximization of a full-power DTV applicant's service area consistent with Sections 73.622 and 73.623 if such DTV applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999 and filed a bona fide application for maximization by May 1, 2000; and

- Section (f)(7)(A) – "No Interference Requirement" – which prohibits granting or modifying a Class A license unless the applicant or licensee shows that the Class A station will not cause interference within the predicted Grade B contour of any analog full-power TV station or the DTV service areas provided in the DTV Table of Allotments, the DTV service areas protected in Section 73.622(e) and (f) of the Rules, the DTV service areas of full-power stations subsequently granted by the Commission prior to the filing of a Class A application, or the DTV service areas of a full-power station seeking to maximize its power under Section (f)(1)(D) of the CBPA.

2. For the reasons which follow, the Three DTV Maximizers urge that the Report and Order in this proceeding should provide maximum interference protection for full-power DTV maximizers and analog replicators. In that way, the Commission will fully implement the letter and spirit of Sections ((f)(1)(D) and (f)(7)(A) of the CBPA.

II. Replication and Maximization are Cumulative Interference-Protection Devices for Full-Power Stations

3. The chief discussion of interference protection for full-power stations occurs in Paragraphs 30-34 of the NPRM. There, the Commission restates (at ¶30), and the Maximizers endorse, the requirement in Section (f)(7)(A) of the CBPA that Class A stations may not interfere with DTV broadcasters' ability to replicate insofar as possible their NTSC service areas. The Maximizers likewise support the view in Paragraph 30 that Class A stations should not be

permitted to cause even *de minimis* levels of interference to DTV service, other than a 0.5% rounding allowance.

4. In Paragraph 32 of the NPRM, the Commission notes that Section (f)(1)(D) of the CBPA prohibits granting Class A applications for license or license modification where the proposal would interfere with stations seeking to "maximize power" under the Rules, if the full-power station has filed a timely notice of intent to maximize or an application for maximization. The Commission asks whether the term "maximize" in the statute refers only to situations in which stations seek power and/or antenna height greater than the allotted values, or whether the term also refers to stations seeking to extend their service area beyond the NTSC replicated area by relocating their station from the allotted site.

5. As the Commission points out in Paragraph 33 of the NPRM, the CBPA's language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Although Section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, Section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of Section (f)(1)(D). The Maximizers fully support the Commission's proposed statutory interpretation that Class A applicants must protect all stations seeking to replicate or maximize DTV power, regardless of whether the DTV station's proposal involves "technical problem" within the meaning of Section (f)(1)(D). In other words, the replication and maximization interference-protection provisions in Sections (f)(1)(D) and (f)(7)(A) for full-power DTV stations should be treated as cumulative interference protection devices that are not dependent upon each other. This is the only

interpretation that is congruent with the intent of Congress to protect the ability of DTV stations to replicate and maximize their service areas.

III. Replication and Maximization Rights Should be Protected Even Where Licensees are Uncertain About Their Eventual DTV Channel

6. The Commission requests comment in Paragraph 34 of the NPRM on how the maximization rights in the CBPA can be applied to full-power stations that maximize their DTV facilities but subsequently move their digital operations to their original analog channel after the DTV transition. As the Commission states, some of these stations may not be in a position to file maximization applications on their analog channels by the May 1, 2000 deadline. The Commission also asks whether and how these stations can preserve the right to maximize on their analog channels should they revert to those channels at the end of the DTV transition. Finally, the Commission seeks comment on how the maximization concept applies to full power stations for which their DTV channel allotment or both the NTSC and DTV channel allotments lie outside the DTV core spectrum (Channels 2-51), and how these stations can preserve their right to replicate their maximized DTV service area on a new in-core channel once that channel has been assigned.

7. These questions are especially important to the Three DTV Maximizers because each Maximizer faces one or more of the dilemmas posed in Paragraph 34 of the NPRM. Specifically:

- Station KNOE-TV (Channel 8) was allotted DTV Channel 55 as its transitional channel, and it has filed a Petition for Rulemaking to substitute DTV Channel 7 for Channel 55. If its petition is granted, KNOE-TV intends to maximize its facilities on DTV Channel 7 as an interim matter. However, in the long run, KNOE-TV intends to return to Channel 8 as its permanent DTV allotment and to maximize operation on DTV Channel 8. KNOE-TV stated all of these facts in its December 30, 1999 letter of intent to maximize its DTV facilities ("letter of

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intent"), which it filed pursuant to Public Notice, DA 99-2729, released December 7, 1999;

- Station WBRZ(TV) (Channel 2) was allotted DTV Channel 42 as its transitional channel, and it has filed a Petition for Rulemaking to substitute DTV Channel 13 for Channel 42. If its petition is granted, WBRZ intends to maximize its facilities on DTV Channel 13. If its petition is denied, WBRZ, in all probability, will return to Channel 2 as its permanent DTV allotment. However, WBRZ will undertake an engineering study to determine whether operation on DTV Channel 2 or DTV Channel 42 is preferable, and may ultimately determine to maximize operation on DTV Channel 42 or DTV Channel 2. WBRZ stated all of these facts in its December 30, 1999 letter of intent to the Commission; and

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- Station KIII(TV) (Channel 3) was allotted DTV Channel 47 as its transitional channel, and it has filed a Petition for Rulemaking to substitute DTV Channel 8 for Channel 47. If its petition is granted, KIII intends to maximize its facilities on DTV Channel 8. If its petition is denied, KIII, in all probability, will return to Channel 3 as its permanent DTV allotment. However, KIII will undertake an engineering study to determine whether operation on DTV Channel 3 or DTV Channel 47 is preferable, and may ultimately determine to maximize operation on DTV Channel 47 or DTV Channel 3. KIII stated all of these facts in its December 30, 1999 letter of intent to the Commission.

Dse 99-297 14/15242

8. As Paragraph 34 of the NPRM postulates, the Maximizers anticipate that they will not be in a position to file final maximization applications by the May 1, 2000 deadline, because their pending DTV rulemaking proceedings will still be unresolved. Moreover, Station KNOE-TV's current DTV allotment is Channel 55 – outside of the "core spectrum". In the first instance, the Maximizers have sought to preserve their statutory right to maximize their facilities by filing letters of intent which identify all of the possible channels[1/] upon which they may maximize their DTV facilities. The Maximizers urge that the Report and Order should require the Commission's analog and DTV engineering data bases to be annotated to provide DTV

[1/] In the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588, 14628 ¶84 (1997), the Commission stated that it "will allow broadcasters, wherever feasible, to swtich their DTV service to their existing NTSC channels at the end of the transition if they so desire".

interference protection for all of the identified channels in letters of intent for a limited period of time (see below).

9. Second, the Maximizers urge that this multi-channel protection should continue for six (6) months after the DTV transition has occurred, so that licensees in the Maximizers' dilemma will have ample time to amend their DTV maximization applications to finalize their post-transition DTV maximization and replication proposals. In other words, since the Commission does not have the power to waive the May 1, 2000 filing deadline for DTV maximization and replication applications, similarly situated licensees should be allowed to file a maximization or replication application for one of the possible channels, which application will remain on file and be subject to channel change amendment until six months after the DTV transition has occurred. By that time, each licensee will be expected to have amended its pending maximization or replication application to specify its final channel choice. Once that amendment is accepted, the other channels specified in their letters of intent will no longer be subject to interference protection from Class A stations in the analog and DTV engineering data bases.

10. In sum, the Maximizers believe that the above data base and application-amendment solutions to the issues posed in Paragraph 34 of the NPRM provide a just and fair balancing of the relative interference-protection rights of full-power DTV licensees and emerging Class A LPTV licensees.

WHEREFORE, in light of the foregoing, the Three DTV Maximizers respectfully request that the Commission should adopt a Report and Order in this proceeding consistent with these Comments.

Respectfully submitted,

NOE CORP. L.L.C.
LOUISIANA TELEVISION BROADCASTING CORPORATION
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Dated: February 10, 2000